

SENATE BILL No. 199

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-2-22; IC 34-46-2-25.4.

Synopsis: Internal insurance compliance audits. Provides that certain information related to voluntary, internal insurance compliance audits is privileged information.

Effective: July 1, 2006.

Young R Michael

January 9, 2006, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Introduced

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 199

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 27-2-22 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2006]:

4 **Chapter 22. Privilege Applying to Internal Insurance**
5 **Compliance Audits**

6 **Sec. 1. As used in this chapter, "department" refers to the**
7 **department of insurance created by IC 27-1-1-1.**

8 **Sec. 2. As used in this chapter, "insurance compliance audit"**
9 **means a voluntary, internal evaluation, review, assessment, audit,**
10 **or investigation to:**

- 11 (1) **identify noncompliance;**
12 (2) **prevent noncompliance; or**
13 (3) **promote compliance;**

14 **with laws, regulations, orders, or industry or professional**
15 **standards, conducted by or on behalf of an insurer or activity**
16 **licensed or regulated under this title.**

17 **Sec. 3. (a) As used in this chapter, "insurance compliance audit**

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document" means a document and related materials prepared in connection with an insurance compliance audit.

(b) The term does not include original underlying corporate records and documents described in section 17 of this chapter.

(c) The term includes any of the following:

(1) An insurance compliance audit report that:

(A) is prepared by an employee of the insurer or an independent contractor; and

(B) may include the scope of the audit, the information gained in the audit, and conclusions and recommendations, with exhibits and appendices.

(2) Memoranda and documents analyzing parts or all of an insurance compliance audit report and discussing potential implementation issues.

(3) An implementation plan that addresses:

(A) corrections of previous noncompliance;

(B) improvement of current compliance; and

(C) prevention of future noncompliance.

(4) Supporting documents, notes, records, analytic data, or other evidentiary materials generated in the course of conducting the insurance compliance audit.

Sec. 4. As used in this chapter, "insurer" has the meaning set forth in IC 27-1-2-3.

Sec. 5. As used in this chapter, "reasonable corrective action" may, where applicable, include:

(1) reimbursement of premium payments, surcharges, or other charges made;

(2) compensation for losses sustained;

(3) reinstatement of policies canceled; or

(4) another appropriate remedy;

with respect to persons adversely affected by an insurer's noncompliance with a law, a regulation, an order, or an industry or professional standard revealed by an insurance compliance audit.

Sec. 6. Except as provided in this chapter, an insurance compliance audit document is privileged information and is not discoverable or admissible as evidence in a civil or an administrative proceeding.

Sec. 7. (a) Except as provided in this chapter, an individual involved in preparation of an insurance compliance audit or insurance compliance audit document is not subject to examination concerning the insurance compliance audit or insurance

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1 compliance audit document in a civil or an administrative
 2 proceeding. However, if the insurance compliance audit, insurance
 3 compliance audit document, or a part of the insurance compliance
 4 audit or insurance compliance audit document is not privileged, the
 5 individual may be examined concerning the part of the insurance
 6 compliance audit or insurance compliance audit document that is
 7 not privileged.

8 (b) An individual involved in the preparation of an insurance
 9 compliance audit or insurance compliance audit document who
 10 becomes aware of an alleged criminal violation in the course of the
 11 preparation shall report the alleged violation to the insurer.

12 (c) Not later than thirty (30) days after receiving a report under
 13 subsection (b), the insurer shall provide the information to the
 14 insurance commissioner.

15 (d) An individual who knowingly fails to make a report under
 16 subsection (b) commits a Class A misdemeanor.

17 Sec. 8. (a) The insurance commissioner:

18 (1) shall not provide to a person an insurance compliance
 19 audit document provided to the commissioner:

20 (A) voluntarily; or

21 (B) at the request of the commissioner under a claim of
 22 authority to compel disclosure under section 13 of this
 23 chapter; and

24 (2) shall treat an insurance compliance audit document as
 25 confidential information for purposes of IC 27-1-3-10.5
 26 without waiving the privileges established under sections 6
 27 and 7 of this chapter.

28 (b) An insurance compliance audit document provided as
 29 described in subsection (a)(1) may not be used for any purpose
 30 other than to determine:

31 (1) whether:

32 (A) disclosed defects in an insurer's policies and
 33 procedures; or

34 (B) inappropriate treatment of customers;
 35 has been remedied; or

36 (2) whether an appropriate plan for remedy of a defect or
 37 inappropriate treatment specified in subdivision (1) is in
 38 place.

39 Sec. 9. (a) An insurance compliance audit document that is
 40 provided to the insurance commissioner is subject to applicable
 41 statutory or common law privilege, including:

42 (1) the work product doctrine;

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(2) attorney-client privilege; or

(3) the subsequent remedial measures exclusion.

(b) An insurance compliance audit document provided to the commissioner is the property of the insurer and is confidential.

Sec. 10. An insurer that discloses an internal compliance audit document to a governmental entity:

(1) voluntarily; or

(2) as required by law;

does not waive a privilege established under section 6 or 7 of this chapter with respect to any other person or governmental entity.

Sec. 11. A privilege established under section 6 or 7 of this chapter does not apply to the extent that the privilege is expressly waived by the insurer that prepared or caused to be prepared an insurance compliance audit document.

Sec. 12. A privilege established under section 6 or 7 of this chapter does not apply if a court, after an in camera review, requires disclosure in a civil or an administrative proceeding after determining at least one (1) of the following:

(1) The privilege is asserted for a fraudulent purpose.

(2) The material is not subject to the privilege as provided under section 17 of this chapter.

(3) The insurer has failed to undertake reasonable corrective action or eliminate noncompliance with applicable laws within a reasonable period.

Sec. 13. (a) Not later than thirty (30) days after the insurance commissioner, the attorney general, or a pleading party in a civil action makes a written request by certified mail for disclosure of an insurance compliance audit document, the insurer that prepared the insurance compliance audit document or caused the insurance compliance audit document to be prepared may file a petition in a court with jurisdiction in the same venue chosen by the original pleading party requesting an in camera hearing to determine whether the insurance compliance audit document or parts of the insurance compliance audit document are subject to disclosure.

(b) Failure by an insurer to file a petition under subsection (a) waives the privilege provided under this chapter for the insurance compliance audit document that is the subject of a request for disclosure under subsection (a).

(c) An insurer asserting a privilege established under section 6 or 7 of this chapter in response to a request for disclosure of an insurance compliance audit document under subsection (a) must

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1 include in the insurer's petition for an in camera hearing, with
 2 respect to the insurance compliance audit document, all the
 3 information listed in section 14 of this chapter.

4 (d) Not later than thirty (30) days after an insurer files a
 5 petition under subsection (a), the court shall issue an order
 6 scheduling an in camera hearing to determine whether the
 7 insurance compliance audit document or parts of the audit
 8 document are privileged or are subject to disclosure.

9 Sec. 14. An insurer asserting a privilege established under
 10 section 6 or 7 of this chapter in response to a request for disclosure
 11 under section 13 of this chapter shall provide to the insurance
 12 commissioner, the attorney general, or a pleading party in a civil
 13 matter, at the time the insurer files an objection to the disclosure,
 14 the following information:

- 15 (1) The date of the insurance compliance audit document.
- 16 (2) The identity of the person who conducted the insurance
 17 compliance audit.
- 18 (3) The general nature of the activities covered by the
 19 insurance compliance audit.
- 20 (4) An identification of the parts of the insurance compliance
 21 audit document for which the privilege is asserted.

22 Sec. 15. (a) An insurer that asserts a privilege established under
 23 section 6 or 7 of this chapter has the burden of demonstrating the
 24 applicability of the privilege.

25 (b) After an insurer has established the applicability of a
 26 privilege under subsection (a), the pleading party in a civil action,
 27 including the insurance commissioner or attorney general, that
 28 seeks disclosure for a cause described in section 12 of this chapter
 29 has the burden of proving that the:

- 30 (1) privilege is asserted for a fraudulent purpose;
- 31 (2) material is not subject to the privilege as provided under
 32 section 17 of this chapter; or
- 33 (3) insurer failed to undertake reasonable corrective action or
 34 failed to eliminate noncompliance within a reasonable period.

35 (c) If the court finds that the privilege is asserted for a
 36 fraudulent purpose, the court shall award reasonable attorney's
 37 fees to be paid by the insurer to the pleading party.

38 Sec. 16. (a) The parties described in section 13 of this chapter
 39 may at any time stipulate in legal proceedings before a court under
 40 this chapter to entry of an order directing whether specific
 41 information contained in an insurance compliance audit document
 42 is subject to a privilege established under section 6 or 7 of this

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chapter.

(b) A stipulation described in subsection (a) may be limited to the instant proceeding and, absent specific language to the contrary, is not applicable in any other proceeding.

Sec. 17. A privilege established under section 6 or 7 of this chapter does not extend to the following original underlying corporate records and documents:

(1) Documents, communications, data, reports, or other information expressly required to be collected, developed, maintained, or reported to a regulatory entity under this title, another state law, or federal law.

(2) Information obtained through observation or monitoring by a regulatory entity.

(3) Information obtained from a source independent of an insurance compliance audit.

(4) Documents, communications, data, reports, memoranda, drawings, photographs, exhibits, computer records, maps, charts, graphs, surveys, and other materials prepared or maintained in the ordinary course of insurance business and not in relation to an insurance compliance audit.

Sec. 18. (a) If a privilege established under section 6 or 7 of this chapter does not apply as described in sections 11 and 12 of this chapter, a court may compel the disclosure of only the parts of an insurance compliance audit document relevant to issues in dispute in the underlying proceeding.

(b) Information required to be disclosed under subsection (a) is confidential and not public information, and a privilege established under section 6 or 7 of this chapter that otherwise applies to the information is not waived for purposes of another civil or administrative proceeding.

Sec. 19. (a) This chapter does not limit, waive, or abrogate the scope or nature of a statutory or common law privilege other than a privilege established under this chapter.

(b) Except as provided in section 13 of this chapter, this chapter does not limit the department's authority to compel the disclosure of documents necessary to further the department's general regulatory purpose.

SECTION 2. IC 34-46-2-25.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 25.4. IC 27-2-22 (Concerning certain information related to internal insurance compliance audits).

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